

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

Darryl Smith,

Petitioner,

v.

Douglas Fender, Warden,

Respondent.

Case No.: 1:21-cv-934

Judge James G. Carr

Magistrate Judge James E. Grimes

**ORDER**

This is a *pro se* state prisoner habeas corpus proceeding under 28 U.S.C. § 2254(d). I referred the Petition (Doc. 1) to the Honorable Magistrate Judge Thomas M. Parker for a Report & Recommendation. The case was later referred to the Honorable Magistrate Judge James E. Grimes Jr., for a Report & Recommendation.

Magistrate Judge Grimes issued his Report & Recommendation on August 23, 2023, recommending to deny the Petition for a Writ of Habeas Corpus. (Doc. 59). The Magistrate Judge has duly notified the Petitioner of the deadline for filing objections, which was September 6, 2023. (See Non-Document Order 08/25/2023).

That time has passed without the Petitioner having filed timely objections.<sup>1</sup>

On *de novo* review, I find the Report & Recommendation well-taken in all respects.

Accordingly, it is hereby

**ORDERED THAT:**

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<sup>1</sup> Objections were due September 6, 2023. Petitioner did not timely file any appropriately responsive document. Thereafter, on or about September 15, 2023, the Clerk's Office for the Western Division (Toledo) received a packet of materials from the Eastern Division (Cleveland), which Petitioner had submitted. On review of the materials, there is nothing contained therein that can be rationally construed as an Objection to the Magistrate's Report. Instead, it appears Petitioner is seeking a Writ of Certiorari from the Supreme Court and submitted a copy of same. Therefore pursuant to standard protocol, the clerk is directed to return the packet of materials to Petitioner with the appropriate cover letter.

1. The Magistrate Judge's Report & Recommendation (Doc. 59) be, and the same hereby is **adopted** as the Order of this Court;
2. The Petition (Doc. 1) be and the same hereby is, **denied and dismissed, with prejudice**;
3. The Clerk's Office shall return the documents Petitioner submitted on or about September 15, 2023 with the appropriate cover letter; and
4. Because jurists of reason could not rationally dispute the reasoning and rationale of both the Report & Recommendation and this resulting Order, I decline to issue a Certificate of Appealability.

So ordered.

/s/ James G. Carr  
Sr. U.S. District Judge